

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IN RE: TAASERA LICENSING LLC,
PATENT LITIGATION

CIVIL ACTION NO. 2:22-MD-03042-JRG

JURY TRIAL DEMANDED

THIS DOCUMENT RELATES TO ALL
CASES

**UNOPPOSED MOTION FOR LEAVE FOR DEFENDANTS TO FILE A
SUPPLEMENTAL CLAIM CONSTRUCTION BRIEF REGARDING THE
“SUBSTANTIALLY REAL-TIME” TERM**

Defendants submit this unopposed Motion for Leave to File a Supplemental (2-Page) Claim Construction Brief Regarding the “Substantially Real-Time” Term. Defendants’ proposed supplemental brief is attached hereto as Exhibit A.

Good cause exists to grant this motion. The parties dispute the meaning of the term “substantially real-time” as recited in claim 1 of the ’518 Patent. Dkt. Nos. 256 at 31-34; 259 at 30-32; 272 at 12. In its reply on August 25, 2023, after Defendants submitted their responsive claim construction brief, Plaintiff raised new arguments in support of its position that the term “substantially real-time” is not indefinite.

The parties’ dispute for the term “substantially real-time,” which the parties agree is a term of degree, centers on whether the patent sufficiently sets forth objective metes and bounds such that the term is definite. Dkt. 272 at 12. Plaintiff was cognizant of Defendants’ position that this term of degree lacks objective boundaries when it filed its opening claim construction brief as evidenced by the fact that it cited the legal test for determining whether a term of degree is definite in its brief and argued that the disputed term “is a term of degree and the ’518 Patent provides a standard for measuring that degree.” Dkt. 256 at 34. Plaintiff cited a passage of the ’518 Patent as evidence for its position with barely any explanation for why the cited passage was relevant. *Id.* Yet, in Reply, Plaintiff broadened its citations and included new arguments for why the disputed term is allegedly definite. Dkt. 272 at 12-13 (citing ’518 Patent at 10:44-65; 12:64-13:9). These arguments were not responsive to anything in Defendants’ brief and should have been included in Plaintiff’s opening brief so that Defendants could respond. By waiting until its reply to raise these arguments, Plaintiff has prejudiced Defendants. Therefore, Defendants have not had an opportunity to address this aspect of Plaintiff’s claim construction argument.

Good cause therefore exists to grant this motion. Defendants did not have fair notice of Plaintiff's full position because it first made new arguments in reply after Defendants filed their responsive claim construction brief. The attached 2-page brief will help narrow the dispute and provide an equal opportunity to all parties to address each other's arguments.

Therefore, Defendants respectfully request that the Court grant this motion and consider their Supplemental (2-page) Claim Construction Brief, attached hereto as Exhibit A, when deciding the proper construction for the "substantially real-time" term."

Dated: September 14, 2023

Respectfully submitted,

By: /s/ Eric H. Findlay

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 14, 2023, a true and correct copy of the above and foregoing document has been served on all counsel of record who are deemed to have consented to electronic service via the Court's CM.ECF system per Local Rule CV-5(a)(3)

/s/ Eric H. Findlay
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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that Counsel for Plaintiff and Counsel for Defendants met and conferred per Local Rule CV-7(h) and that this motion is unopposed by Counsel for Plaintiff.

/s/ Eric H. Findlay
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